

## REMARKS

Claims 17-31 are pending in the present Application. Claims 17 and 24 have been amended and no claims have been canceled or added, leaving Claims 17-31 for consideration upon entry of the present Amendment. No new matter has been introduced by these amendments. Reconsideration and allowance of the claims are respectfully requested in view of the above amendments and the following remarks.

### Specification Objections

The disclosure stands objected to as the Examiner stated that the alkenylaromatic compounds are defined as nonelastomeric yet random copolymers of styrene and butadiene are mentioned. The second full paragraph at page 6 of the Specification has been amended to include the term “elastomeric or” to clearly define the alkenylaromatic compound. Therefore, Applicants respectfully request reconsideration and withdrawal of the above objections.

### Claim Rejections Under 35 U.S.C. § 112, First Paragraph

Claims 17-22 and 24-31 stand rejected under 35 U.S.C. § 112, first paragraph, as failing to comply with the written description requirement. Specifically, the Examiner asserted that the specification shows only nonelastomeric random copolymers of styrene and butadiene, but not every kind of random styrene copolymer.

Claims 17-22 and 24-31 stand rejected under 35 U.S.C. § 112, first paragraph, as the Examiner asserted that the specification, while being enabling for nonelastomeric random copolymers or styrene, does not reasonably provide enablement for all and every random copolymer of styrene.

The amended independent claims 17 and 24 include only rubber-modified polystyrenes. Examples 1-5 of the Specification as filed are directed to pellets prepared with a rubber-modified polystyrene. In view of the above amendments, Applicants respectfully request reconsideration and withdrawal of the above rejections over claims 17-22 and 24-31.

Claim Rejections Under 35 U.S.C. § 102(b)

Claims 17-24 and 28-31 stand rejected under 35 U.S.C. § 102(b), as allegedly anticipated by Nakano 5,165,990 (hereinafter “the ‘990 patent”). Applicants respectfully traverse this rejection.

The ‘990 patent generally discloses a stampable sheet comprising 95 to 20% by weight of styrene polymer having a syndiotactic configuration and 5 to 80% by weight of fibrous reinforcing material having an average fiber length of at least 1 mm which is excellent in heat resistance, impact resistance, dimensional stability and dielectric properties (abstract).

To anticipate a claim, a reference must disclose each and every element of the claim. *Lewmar Marine v. Varient Inc.*, 3 U.S.P.Q.2d 1766 (Fed. Cir. 1987). Moreover, the single source must disclose all of the claimed elements “arranged as in the claim.” *Structural Rubber Prods. Co. v. Park Rubber Co.*, 749 F.2d 707, 716, 223 U.S.P.Q. 1264, 1271 (Fed. Cir. 1984).

Independent claims 17 and 23 are directed to pallets that are suitable for commodity storage and meet or exceed Underwriters Laboratory UL 2335 protocol for pallets. Independent claim 24 is directed to a method of forming a plastic pallet via injection molding to result in a plastic pallet that is suitable for commodity storage and meets or exceeds Underwriters Laboratory UL 2335 protocol for pallets.

The ‘990 patent does not anticipate independent claims 17, 23, and 24 as this reference fails to teach each and every element of the instant claims. Specifically, the ‘990 patent fails to teach the particular limitations that the pallet is suitable for commodity storage and meets or exceeds Underwriters Laboratory UL 2335 protocol for pallets.

The claimed pallets are directed to those large structures used to hold commodity items for storage in warehouses. These pallets are often used to hold many hundreds of pounds of material and are required to be of a general size, shape, and strength to function as storage tools. Exemplary pallet structures for commodity storage are disclosed in the Specification as filed including those meeting the Grocery Manufacturing Association requirements for pallets, i.e., 48” x 40”; 4-way entry; accommodate pallet jacks; have a smooth, non-skid, top load bearing surface having at least 85% coverage; a bottom

loading surface and have cut-outs for pallet jack wheels from four (4) sides; rackable from 48" and 40" dimension; recyclable; desired weight under 50 pounds; have a load capacity of 2,800 pounds; capable of bearing 2,800 pound loads safely in stacks of 5 loads high racking; and weather and moisture resistant (Specification, page 4).

Moreover, the instantly claimed pallets meet or exceed Underwriters Laboratory UL 2335 protocol for pallets. The UL 2335 protocol includes idle storage and commodity classification tests. (See UL's The Code Authority, Vol. 7, No. 1, 1998, page 1.) The commodity classification tests

measure the amount of heat released by commodities or contents stored on plastic pallets, such as those found in real-life warehouse applications. If heat release results demonstrate that the plastic pallets do not increase the heat generated by the Class II commodities during the fire test, then the commodity classification of the plastic pallets is equivalent to wood.

(UL's The Code Authority, Vol. 7, No. 1, 1998, pages 1-2). Thus, in addition to meeting the size, shape, and strength requirements of pallets suitable for commodity storage, the claimed pallets must also meet flame retardancy requirements to pass UL 2335 protocol for pallets.

The '990 patent, on the other hand, is directed to stampable sheets. These stampable sheets are mostly used for automobile parts such as a bumper and electrical and electronic parts (column 1, lines 1 to 23). The '990 patent fails to teach the limitations that the pallet is suitable for commodity storage and that the pallet meets or exceeds Underwriters Laboratory UL 2335 protocol for pallets.

Therefore, Applicants respectfully request reconsideration and withdrawal of the 102(b) rejections over claims 17-24 and 28-31 as the '990 patent fails to teach each and every element of the instant claims.

#### Claim Rejections Under 35 U.S.C. § 103(a)

Claims 17-24 and 28-31 are rejected under 35 U.S.C. §103(a), as being unpatentable over the '990 patent in view of Haaf et al. 4,410,651 (hereinafter "the '651 patent"), Haaf et al. 4,442,251 (hereinafter "the '251 patent"), Abolins et al 4,504,613 (hereinafter "the '613 patent"), Lee, Jr. 5,008,314 (hereinafter "the '314 patent") or

Okada et al. 5,412,024 (hereinafter “the ‘024 patent”). Applicants respectfully traverse this rejection.

The ‘651 patent generally discloses blends of polyphenylene ether resin and a small amount of certain ethylene copolymers or terpolymers containing hydroxyl and carbonyl functional groups, optionally including impact modifier wherein articles made from the blends have better Gardner impact strength (abstract).

The ‘251 patent generally discloses compositions of polyphenylene ether resin, optionally containing an impact modifier by incorporation of small amounts of a copolymer of ethylene and methyl acrylate wherein articles made from the compositions have better Gardner impact strength (abstract).

The ‘613 patent generally discloses that the ductile impact strength and tensile elongation of flame retardant compositions of a polyphenylene ether resin and a poly(alkenyl aromatic) are upgraded by the addition of only small amounts, typically from about 0.1 to about 10 parts by weight, of high molecular weight polyfunctional esters or low molecular weight saturated polyesters (abstract).

The ‘314 patent generally discloses a thermoplastic blend for molding articles with resistance to environmental stress cracking and with good melt flow properties comprising a polyphenylene ether resin having a low intrinsic viscosity and a polystyrene resin having a high intrinsic viscosity. The composition can further contain an impact modifier and/or a flame retardant (abstract).

The ‘024 patent generally discloses a thermoplastic resin composition which comprises a terminal-modified styrenic polymer having syndiotactic configuration the terminal of which is bonded to a compound having a polar group or a composition of the above terminal-modified styrenic polymer and a terminal-unmodified styrenic polymer having syndiotactic configuration, and an inorganic filler (abstract). The ‘024 patent teaches a pallet generally (column 9, line 50).

For an obviousness rejection to be proper, the Examiner must meet the burden of establishing a *prima facie* case of obviousness, i.e., that all elements of the invention are disclosed in the prior art; that the prior art relied upon, coupled with knowledge generally available in the art at the time of the invention, contain some suggestion or incentive that would have motivated the skilled artisan to modify a reference or combined references.

*In re Fine*, 5 U.S.P.Q.2d 1596, 1598 (Fed. Cir. 1988); *In Re Wilson*, 165 U.S.P.Q. 494, 496 (C.C.P.A. 1970); *Amgen v. Chugai Pharmaceuticals Co.*, 927 U.S.P.Q.2d, 1016, 1023 (Fed. Cir. 1996).

Instant independent claims 17, 23, and 24 are not obvious over the '990 patent in view of the '651, the '251, the '613, the '314, or the '024 patent as these references, either alone or in combination, fail to teach or suggest all the limitations of the instant claims. Specifically, none of the references teach or suggest the particular limitations of the instant claims that the pallet is suitable for commodity storage and meets or exceeds Underwriters Laboratory UL 2335 protocol for pallets.

As presented above, the '990 patent fails to teach or suggest that the pallet is suitable for commodity storage and meets or exceeds Underwriters Laboratory UL 2335 protocol for pallets. The '990 patent is directed to stampable sheets and these sheets are mostly used for automobile parts such as a bumper and electrical and electronic parts. Although the '990 patent teaches a laundry list of articles, including a pallet generally, none of these articles are described as pallets suitable for commodity storage and/or meet or exceed Underwriters Laboratory UL 2335 protocol for pallets. Indeed, the '990 patent does not in any way discuss pallets for commodity storage or Underwriters Laboratory UL 2335 protocol for pallets. Thus a skilled artisan would not be motivated to make pallets for commodity storage that also meet or exceed Underwriters Laboratory UL 2335 protocol for pallets.

The '651, the '251, the '613, the '314, and the '024 patents, either alone or in combination, fail to cure the above deficiencies of the '990 patent. Specifically, none of the above references teaches or suggests the particular limitation that the pallet be suitable for commodity storage, only the '024 patent generally discloses a pallet in a laundry list of articles. Moreover, none of the references teaches or suggests that the pallet meets or exceeds Underwriters Laboratory UL 2335 protocol for pallets.

Thus, independent claims 17, 23, and 24 are not obvious over the '990 patent in view of the '651, the '251, the '613, the '314, and the '024 patents as none of the references teaches or suggests all the required limitations of the instant claims.

Additionally, dependent claims 28-31 are further not obvious over the above references. These dependent claims contain further requirements that the pallet has a

certain shape, load capacity, or use in addition to the requirements of claim 17 from which these claims depend. For example, claim 28 requires that the pallet has a load capacity of 2,800 pounds; claim 29 requires that the pallet is capable of bearing 2,800 pound loads in stacks of 5 loads high racking; claim 30 requires that the pallet can accommodate pallet jacks; and claim 31 requires the pallet meets the Grocery Manufacturing Association specifications. None of the references discusses in any way any of these additional requirements of claims 28-31.

Therefore, Applicants respectfully request reconsideration and withdrawal of the 103(a) rejections over claims 17-24 and 28-31.

It is believed that the foregoing amendments and remarks fully comply with the Office Action and that the claims herein should now be allowable to Applicants. Accordingly, reconsideration and allowance are requested.

If there are any additional charges with respect to this Amendment or otherwise,  
please charge them to Deposit Account No. 50-1131.

Respectfully submitted,

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